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SPEECH
OF
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M R. COBDEN,

“FOREIGN ENLISTMENT ACT,”

IN
THE HOUSE OF COMMONS,

FRIDAY, APRIL 24TH, 1863.

LONDON :

WILLIAM RIDGWAY, 169, PICCADILLY. W.

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S P E E C H.

MR. COBDEN:—Sir, the legal points that have been discussed in connection with the subject before us are undoubtedly of the greatest importance, but I apprehend that no one will expect that any practical result will arise from this passage of arms between gentlemen learned in the law in this House upon a question which is now pending before the law courts. When the Hon. Member for Liverpool gave notice of his motion, I had no idea he could have contemplated any such result, or that he could have wished this question to be confined to the mere technical aspect which has been sought to be given to it. I think a larger and more important question is before us,—because it is not merely the vessel now under consideration that public report charges with being intended to commit a breach of the statute law. It is said there are many vessels now building with the same object in view, and I apprehend that this is a proper time, in the interests of this country,—in the interests of this country and no other country—to offer a few remarks upon this subject. I say the interests of this country, because we are constantly met by phrases such as “You are consulting American interests”—“you

are neglecting the honour of England." I wish to consider the British interest in my observations on this Foreign Enlistment Act, and I will consider no other interest; and I maintain, at the outset, there is no other country in the world that has a quarter—I say deliberately a quarter—the interest which we have in upholding the system of international law on which this Foreign Enlistment Act is based.

Now, Sir, the Hon. Member for Liverpool has—as was done by the Solicitor-General on a former occasion—introduced another topic which has tended to confuse the public mind here and out of doors, and the world over, as to two questions which are totally distinct. The Hon. Member has referred to the practice of buying, and selling, and exporting arms and munitions of war. There is no law in this country that prohibits the buying and selling, or manufacturing, or exporting, arms and munitions of war. It has been truly said by the Hon. Member for Plymouth, and by the Solicitor-General, that there was no country which had furnished such high authorities upon the subject as America itself. From the time of Jefferson, who, in that admirable passage read by the Hon. Member for Plymouth, exhausted the whole argument in a few lines, down to the present time, every great authority in that country has laid down and acted upon the doctrine, that a Government is not responsible for the dealings of its subjects in arms and munitions of war.

They carry them at their own risk if they attempt to run a blockade, but the Government is not responsible, and it never ought to be made the subject of diplomatic communication or complaint. I am astonished that Mr. Adams, and Mr. Seward, should have introduced that question into their correspondence upon the subject of furnishing ships of war. I will not say I was astonished at Mr. Seward, because one who writes so much, must write on every subject, and is in danger of writing on every side of a subject; but I am astonished that Mr. Adams should have mixed this subject up with what is really a vital question, -- that of furnishing or equipping ships of war.

There is only one reason why I am not sorry that Mr. Adams has touched upon that subject. He has alluded to large and systematic operations being carried on in this country for sending arms and munitions of war to blockaded ports. That involves the risk of being seized by the cruisers of the Federal States, and as the only tribunal for punishing those who violate the blockade is in the hands of those who are maintaining the blockade (and we know the blockade is violated systematically — we know there are joint-stock companies to do it), as the only authority that can confiscate that property is the Federal Government through its prize courts, and the only police that can seize those who violate the law of nations are the Federal cruisers, it is well this country should know what is going on.

Because, if in the crowd of steamers now found for the first time carrying on trade in the West Indian waters,—though no steamers were required for that commerce a few years ago, when we had to pay £250,000 a year for a line of steam-packets for the conveyance of our letters,—if in the crowd of those vessels, eager to violate the blockade, the innocent should suffer with the guilty, Mr. Adams has perhaps so far rendered a service, by showing that his Government are entitled to some forbearance if one or two innocent vessels should be subject to detention by their cruisers. (No, no.) I am not going into the subject of the blockade now. I promise that I will deal with that question separately another time, and I shall be just as ready to meet your arguments on English grounds then as I am on the question now before us.

Now coming to the real and only question before us,—the infringement of our own “Foreign Enlistment Act,” what are the grounds on which I desire to see the Government exercise the utmost vigilance in preventing the violation of that law? It is because we, of all other countries, have most at stake in seeing that the law is observed. And how do I expect to see the Government supported—how do I hope to see the public sanction a vigilant observance of that law, but by making clear to the House and to the country that the Americans have claims on us for the due observance of that law, inasmuch as it will be only extending to them a fair recipro-

city, for the honourable neutrality which they at all times exercised towards us when we were in a position to require it at their hands? (Cries of "Oh!" and "No.") I am glad some hon. gentlemen dissent. I like to hear opponents say "No." Now, will they listen to me, and when they have listened, I will challenge them to search the records of our State papers to show an instance of a diplomatic despatch having been written complaining of an unredressed grievance under the American Foreign Enlistment Act.

Now what does history say of the conduct of the Americans with reference to this system of international legislation? My hon. friend the Member for Plymouth has stated truly that all the legislation that has taken place in America, on the subject of foreign enlistment, was at the instance and in behalf, I may say, of European Governments. I will add that in the majority of cases it was at the instance and for the benefit of England. Take the first law passed in 1794. I am not going to dwell on historical subjects, or to repeat the familiar history of Mr. Genet and his proceedings in 1793-4; but the passing of that Act so remarkably illustrates the good faith of the American Government that it cannot be passed over without notice. The United States had then been but ten years an independent nation, owing its independence mainly to the assistance given by France. In the course of these ten years France had gone through a revolution; it had be-

come a sister Republic ; and it sent out an envoy to America, claiming assistance, and applying for the right of fitting out cruisers in American ports. It was against England, the old enemy of both, that it sought this advantage. What was the conduct of America under these circumstances, the most trying that could be imagined ? Why, we all know that it required all the moral power of Washington to enforce the law. Not the law of America, for they had no law. The Americans had no foreign enlistment act, but they put themselves under the common law of England; or what Washington in his proclamation called international law, and they gave us all the protection which they now ask us to give them. In 1794 they passed a Foreign Enlistment Act, and at whose instance ? I will not weary you with long extracts or historical references of my own : I will give you the words of an English statesman, whose statement will, probably, be heard with some respect on the other side. Mr. Canning, speaking on the passing of our Foreign Enlistment Act in 1819, said :

“ In 1794 this country complained of various
“ breaches of neutrality committed on the part of
“ citizens of the United States of America. What
“ was the conduct of that nation in consequence ?
“ Did it resent the complaint as an infringement of
“ its independence ? Did it refuse to take such
“ steps as would insure the immediate observance of
“ neutrality ? Neither. In 1794, immediately after

"the application from the British Government, the Legislature of the United States passed an Act, prohibiting, under heavy penalties, the engagement of American citizens in the armies of any belligerent Power."

That was not the entire scope of their Act, for it embraced the provisions of our own Act regarding ships of war as well. Such is the recorded statement of Mr. Canning.

I come now to the second case, in which the Americans not only enforced but amended their Foreign Enlistment Act, at the instance of a foreign country. In 1818, the Spanish American Colonies were in revolt against the mother country, and there was a strong feeling of sympathy in the United States for the colonists. There was a similar feeling in this country :—we generally sympathise with everybody's rebels but our own. Mr. Canning and Lord Castlereagh brought into this House in 1819 a Foreign Enlistment Bill, which was intended to make provision for the more faithful observance of our neutrality towards the Spanish American colonies. The measure met with great resistance from the Whig party, Sir James Mackintosh and others opposing it. I will read an extract from the speech of Lord Castlereagh, whom even the gentlemen opposite, below the gangway, will probably admit as an authority. In 1819, wishing to find an argument that would tell effectually with his Whig opponents, he said :

"It was a little too much in the hon. and learned gentleman (Sir James Mackintosh) to censure the Government of this country as being hostile to the South Americans and partial to Spain, while we had delayed doing what another government, which he would allow to be free and popular, had done long ago. He would ask him, "had the United States done nothing to prevent their citizens from assisting the South Americans? They had enacted two laws on the subject, nearly of the same tendency as that now proposed."

Not only is it true, as stated by my hon. friend the Member for Plymouth, that the American Government passed their Foreign Enlistment Acts at the instance of European countries, but there is this remarkable fact in proof of their good faith, that they passed them in opposition to the sympathies, and even to the supposed interests of their own people. In every one of the three cases I have to refer to, the Government acted in direct hostility to the popular sympathies of the time, and it required all the influence of leading and authoritative politicians to carry those measures.

I now come to the strongest case of all, and I am about to summon as a witness the Noble Lord at the head of the Government. Most of us are old enough to remember the rebellion which broke out in Canada in 1837. In January, 1838, when Parliament met, we were in a state of great apprehension with reference to the condition of things on the North

American continent. That apprehension was not so much with respect to the rebellion of our own colonists, as on account of what was passing on the frontier of the United States, in consequence of the great excitement which was prevailing there. The border population was sympathizing strongly with the rebels, and the danger that we felt was that that state of things might lead to a collision with the United States. Soon after this House assembled Sir R. Inglis, interpreting the general anxiety of the country, rose to ask the Noble Lord who is now at the head of the Government, but who was then Foreign Secretary, whether he had any objection to state what were at that moment the relations between Mr. Fox, our representative at Washington, and the Government of the United States. Lord Palmerston replied that, fortunately, he was able to give very exact information, having the day before received a despatch from Mr. Fox,—from which we may conclude that Sir R. Inglis and the Noble Lord were agreed, beforehand, that the question should be asked. The Noble Lord went on to describe the excitement and agitation which prevailed on the frontiers of Canada, how the rebels had taken possession of a place called Navy Island, how they had flocked there and been joined by citizens of the United States, how arms had been furnished to them, and how there existed, in fact, a most dangerous state of things. The Noble Lord stated that Sir Francis Head, the Governor of Canada, had

sent a despatch to Mr. Fox, the British Minister at Washington, complaining of these most unfortunate and alarming occurrences, and continued :—

“ Mr. Fox immediately communicated these facts “ to the President of the United States, and received “ in reply a most friendly communication. In the “ first instance he had a verbal communication from “ Mr. Forsyth, the United States Foreign Secretary, “ containing an expression of sentiments such as “ might be expected from the friendly spirit of the “ United States Government, and the high sense of “ honour by which that country has been actuated “ in its dealings with foreign countries. On the “ 5th ult. Mr. Fox received a note from Mr. For-
“ syth, in which was a passage to this effect,—‘ That
“ ‘ all the constitutional powers vested in the Exe-
“ ‘ cutive would be exercised to maintain the supre-
“ ‘ macy of those laws which had been passed to
“ ‘ fulfil the obligations of the United States towards
“ ‘ all nations which should unfortunately be en-
“ ‘ gaged in foreign or domestic warfare.’ In addi-
“ tion to this assurance that all the powers now
“ vested in the central Government should be used
“ to preserve neutrality, the President, on the 5th,
“ sent down a special message to Congress, stating
“ that, though the laws as they stood were quite
“ sufficient to punish an infraction of the neutrality,
“ they were not sufficient to prevent it, and asking
“ Congress to give the Executive further power for
“ that purpose. Upon the receipt of this communi-

"cation a short discussion, in which many of the
"leading men, including Mr. Clay, Mr. Calhoun,
"and others of high character, participated, took
"place in Congress, and, without exception, all who
"spoke expressed sentiments of a most friendly dis-
"position towards this country, stating a strong
"opinion that the laws should be enforced, and that
"if, as they stood, they were insufficient, stronger
"powers should be given to the Executive."

Let me pause for an instant in my narrative to render justice to those truly great men, Mr. Clay and others, who, at a moment of national peril, caused by popular excitement and passion, threw all thought of their own momentary popularity to the winds, and—as every public man ought to do—regarded their public influence only as a sacred trust to be exercised, in such an emergency, for their country's advantage.—Now I will use an hypothetical case. Let us suppose that, instead of the friendly response which we received from the American Government, the President had replied to Mr. Fox in these terms :—

" I hope the people and Government of the United
" Kingdom will believe that we are doing our best
" in every case to execute the law ; but they must
" not imagine that any cry which may be raised
" will induce us to come down to Congress with a
" proposal to alter the law. If this cry is raised for
" the purpose of driving the President's Government
" to do something which may be contrary to the

“ dignity of the country in the way of altering our
“ laws for the purpose of pleasing another Govern-
“ ment, then all I can say is that such a course is
“ not likely to accomplish its purpose.”

Now this, with the simple alteration of “ United States” for “ United Kingdom,” “ this House” for “ Congress,” “ Her Majesty’s Government” for “ the President’s Government,” this is the reply of the Noble Lord at the head of the Government, three weeks ago, when an appeal was made to this House to obtain from us, for the people of the United States, the neutrality which, under precisely similar circumstances, we had received from them. I confess I should prefer, when these events come under the judgment of the historian, the award which will be given to the American statesmen.

I wish now to draw your attention to what was done in consequence of that promise of the American Government. Why, notwithstanding that their Foreign Enlistment Act, as it stood, was much more stringent than ours, and gave greater powers than ours now does, they passed a supplementary Act for two years, strengthening so greatly its provisions, that one could hardly believe that such arbitrary powers would have been given to the Government of the United States. (Cries of “ Hear, hear,” from the Opposition benches.) I hear cries of “ hear, hear,” of a rather doubtful tone from gentlemen on the other side—but let them remember that this Act was passed twenty-five years ago, when nobody

accused the Americans of submitting to tyranny ; and let it be recollect that this was done voluntarily for our benefit. By this temporary Act which received the assent of the President on the 10th of March, it was enacted :—

“ That the several collectors, naval officers, surveyors, inspectors of customs, marshals, and deputy-marshals of the United States, and every other officer who may be empowered for the purpose by the President of the United States, are hereby respectively authorised and required to seize and detain any vessel to be provided or prepared for any military expedition or enterprise against the territories or dominions of any foreign prince or Power.”

It gives them power to seize a vessel without any proof on oath, an absolute power of seizure on suspicion, and a right to detain the vessel for ten days, during which they shall be able to give evidence on oath before a judge, and, in case they fail, the ship is to be released, but is to be liable to be seized again in case any cause should arise. And, to carry out this temporary Act, the whole power of the militia, and of the armed forces of the country, was placed at the disposal of these officers. This is the third instance in which the Americans have passed neutrality laws for the benefit of European States.

But there was a fourth occasion on which an appeal was made to the Government of the United States. On the breaking out of the Crimean War

in 1854, we sent a communication, jointly with France, expressing a confident hope that the American Government would,—

“ In the spirit of just reciprocity, give orders “ that no privateer under Russian colours shall be “ equipped, or victualled, or admitted with its prizes “ in the ports of the United States, and also that the “ citizens of the United States shall rigorously abstain “ from taking part in armaments of this nature, or “ in any other measure opposed to the duties of a “ strict neutrality.”

The satisfactory conduct of the American Government during the Crimean war has been so frequently referred to, that I need not dwell on the subject. I will not repeat the history of the proceedings in connexion with vessels supposed to be fitting out as privateers in American ports. We know that the building of a ship of war, which was about half completed, for the Russian Government, was suspended at the commencement of the war, and that it was not completed until three years after the war was concluded. I have heard a whisper that it was suspended because the Russian Government could not find money for the completion of the ship; but does any one believe that story who remembers the millions which were at the same time being expended at Sebastopol? There was another vessel called the Maury, which was suspected of being intended for the Russian Government, and was seized by the American authorities, at the request of our Consul

at New York, under circumstances which showed a much greater activity and vigilance than we have exhibited in the case of the Alabama. But I will not refer further to these matters.

The deductions which we may fairly draw from these facts are, first, that the American Government and people have, from the very formation of their Union, shown a willingness to maintain and enforce a strict neutrality in the wars which have been constantly taking place between European States; and next, that they have done it under circumstances of the utmost difficulty. It is easy enough to maintain neutrality where you have no feelings either way, but they did it in spite of their sympathies, and in opposition to their wishes. There can be no doubt that, in the case of the Canadian revolt, there was a strong feeling among the mass of the American people that a successful rebellion in Canada might have led to a friendly annexation with the United States. There is no doubt that the strongest national yearnings were attracted towards that struggle; and I again call the attention of the House to the fact, that in spite of these temptations to go wrong, the United States have uniformly gone right on this question. We may have had other grounds of complaint:—we may allege that the Americans enforced their neutrality laws with too much rigour against ourselves during the Crimean war. I think that in regard to our enlistments in America, they persisted in exacting redress from us in a manner that partook

of unfriendly severity, if not of direct hostility ; but in respect to the due observance towards us of their Foreign Enlistment Acts, I repeat again,—and let no one answer me with a vague statement of what he has heard somewhere or other,—I challenge any one to show me in all our diplomatic correspondence a despatch which complains of an unredressed grievance under those Acts.

I have mentioned these circumstances in the hope that they may become generally known, and in order that they may bring the sentiments of this House and the public opinion of the country to a temper which shall incline us to act by the United States as they have acted towards us. If the motives which I have appealed to in this statement of facts will not have that effect, then I do not know that I ought to occupy another minute in trying to bring any other motives to bear upon the minds of my countrymen. I do not intend to appeal to your fears ; that would be out of the question ; but I will not sit down without saying a word or two with reference to the interest we have in the question. If a sense of obligation to a friendly country for its uniform observance of an honourable neutrality is not sufficient to induce us to pursue a similar policy, let us look at what will be the consequence of pursuing another course.

The hon. and learned gentleman the Solicitor-General, in a speech from which I may not quote, as it was delivered in a previous debate this Session,

and which he has published as a pamphlet, laid it down that we have only to deal with municipal law, that the Foreign Enlistment Act was passed at our own will and pleasure, and that we may repeal it in like manner at our own pleasure. The Solicitor-General laid it down, broadly, that the Foreign Enlistment Act was simply a measure of municipal law which we might repeal at our own will and pleasure. Now, I join issue with the hon. and learned gentleman, and I maintain that that Act is part of an international code, and that we are bound as distinctly to the United States, by the rules of honourable reciprocity, in this case as if treaty engagements existed. We have appealed to the Americans in our emergencies not to allow their citizens to molest us; begging them not to allow privateers to be fitted out; and when it is clear that there has been no violation of their law, we are, I contend, bound to observe the same honourable neutrality.

The Solicitor-General has indeed laid down the rule that our neutrality may be maintained either by aiding both belligerents, or by assisting neither. The hon. and learned gentleman says, that if we choose to allow both parties to come and buy ships of war here, no infringement of our neutral position would, as a consequence, take place. That may be an abstract legal truth; but what must we say of a statesman who stands up in the House of Commons and gives expression to such a *dictum* as that,

to be quoted hereafter at Washington? I am not going to discuss points of law with the hon. and learned gentleman; that would be an act of presumption on my part. I will admit, therefore, that we may observe neutrality, either by abstaining from assisting either party in the contest, or by rendering assistance to both. Is that, however, let me ask, a state of things which we ought to covet? I should like to know from hon. gentlemen opposite what would be our fate in any of those numerous wars in which we have been engaged, and to the recurrence of which we are liable, if this doctrine were carried fully into effect? If, for instance, the little dark cloud which threatened a rupture with Brazil had burst upon our heads, America would, according to the theory of the hon. and learned gentleman, have been entitled to fit out vessels for the Brazilian government, to cruise in the name of that government, and with the commission of the Brazilian Emperor, against our commerce, provided only that the offer were made to build ships of war at the same time for us.

But the subversion of the principle on which our "Foreign Enlistment Act" rests does not depend solely upon our adopting the line of policy to which the hon. and learned gentleman has, as I think, so unwisely referred. Can we, I would ask, look for the maintenance of the law relative to foreign enlistment in America, or elsewhere, unless we ourselves set the example of good faith? You have

not only in America, but in France, a most stringent law on this subject. I wrote to a friend in Paris to ascertain what was the mode of proceeding adopted there in order to prevent vessels slipping from their ports as the Alabama had done from ours, and I was told that they required no Foreign Enlistment Act there for the purpose. By a penal code—which I believe all the nations of the Continent imitate, more or less—any citizen of France, who, without the consent of the Government, commits an act of hostility against a foreign Power, by which the country incurs the risk of war, is liable to transportation. The law further provides that anybody who fits out a ship of war, or does any hostile act, owing to which an enemy may inflict reprisals on a French citizen, will likewise be held subject to the same penalty. This, you may say, is very severe; but then you want reciprocity with that country. The French do not ask you to pass a law in accordance with their model; but what both France and America will require is this, that you will, in the event of war, as effectually prevent privateers from going out and preying upon their commerce, as they prevent theirs from preying on yours. You may choose any way you please to do it; but surely you have too much common sense to imagine that you can induce America to abstain from reprisals in the future, unless you observe the laws of an honourable neutrality in her regard.

Now is there, let me ask, no way in which you can prevent ships of war from sailing from your ports, threatening, as they do, the commerce of a friendly country, all of them built in England, manned from England, armed and equipped from England, roaming the seas without any fixed goal, and marking their track by fire and devastation? That is the question to which you have to address yourselves; and unless you are prepared effectually to put down this system, the Foreign Enlistment Act will be, as the Hon. and learned Member for Plymouth said, a dead letter: and if it be made a dead letter here, most assuredly the same state of things will result elsewhere. Who then, I should wish to ask, has the most to lose by such a revolution in the maritime law of nations? What proportion of the value of the ships and cargoes which float on salt water belongs to British capitalists? The lowest estimate which I have heard formed of the value of this property afloat, by those who have instituted careful inquiries at the insurance offices and other quarters, shows that we have, upon an average, from £100,000,000 to £120,000,000 : -
ling worth of the property of British capitalists on the seas. Rest assured no other country has £30,000,000 worth, and that you have nearly as much property at stake upon the ocean as all the rest of the world together. You have, moreover, 10,000,000 people, in the year, to feed upon food brought from foreign countries. You receive three-

fourths of the tea, and four-fifths of the silk from China; more than one-half the tallow and hemp from Russia; there is more cotton, more wheat, more Indian corn, brought to us than to all the rest of the world. You are so powerful here in your island home that, with the ordinary mode of warfare, you can set the world at defiance; but the moment you begin a war of reprisals on the ocean, your commerce is the most vulnerable of any. ("No, no!") Hon. gentlemen who deny the truth of that statement do not understand the position of the commerce of England. But, be that as it may, is there, I would ask, nothing which we can do to show our good faith in this matter?

Is it not strange that any one should be found in this country, and especially in this House, claiming to be a reflective man, who would for a moment consent to range himself in favour of those who are committing such acts as those to which I have alluded, against the laws as well as the vital interests of the nation? I wish to see the public ranged on the side of law in this case, as well as in every other. Every one engaged in building a ship of war, in violation of the law, is committing an offence subjecting him to the penal consequences of fine and imprisonment. Is there anybody so engaged? If so, is there nothing we can do to show that we wish to put down this system? The case of the Alabama is, perhaps, clearer than that of the Florida, or the Japan. The last-mentioned vessel was, however,

one not only built here for the Confederate Government, but manned by Englishmen, surreptitiously conveyed on board the ship. In the case of the Alabama, Earl Russell said that she escaped from our ports on the pretext of going on a trip of pleasure; and he also states that he sent out orders to have this vessel stopped at Nassau. But if she was to be stopped at Nassau, why not elsewhere? It is said you cannot stop a vessel like that after the first voyage. My answer to the objection is, that the Alabama has never made a voyage at all; she has been cruising about, and never has had a destination or a home. But why, let me ask, did not the Government forbid the entry of this vessel into your own ports, known as she is to have left this country illegally, and to be manned by English sailors, in violation of the Foreign Enlistment Act? Would anybody have a right to complain of your taking that course? Issue a proclamation to the effect that this vessel stole away from your port without clearance or register, and that, so far as British ports throughout the world are concerned, she is outlawed. If you were to do that, and other countries were, as I expect they would, to follow your example, you would soon put an end to such proceedings by making them unprofitable.

The entire code of neutrality on which the Foreign Enlistment Act is based is now at stake. It is less than two centuries old. The ancients had no word to express neutrality in an international sense. In

the middle ages nations hardly recognised the rights of neutrality. A war between two countries then meant a general war. A better state of things has gradually grown up ; and shall we, I would ask, by virtually repealing the Foreign Enlistment Act, be the first to go back to the barbarism of the Middle Ages ? I cannot help thinking that this House, when it reflects on the facts of the case, will refuse to give its sanction to a retrograde policy which would be unworthy of this country, and a great crime against humanity.

THE END.

IMPORTANT PAMPHLETS, ETC.

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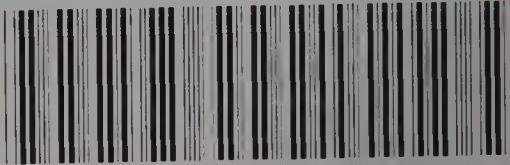
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